

## Internal Revenue Service, Treasury

## § 1.853-2

value of its total assets, at the close of the taxable year for which the election is made, invested in stocks and securities of foreign corporations, and (2) must also, for that year, comply with the requirements prescribed in section 852(a) and paragraph (a) of § 1.852-1. The term "value", for purposes of the first requirement, is defined in section 851(c)(4). For the definition of foreign corporation, see section 7701(a).

### § 1.853-2 Effect of election.

(a) *Regulated investment company.* A regulated investment company making a valid election with respect to a taxable year under the provisions of section 853(a) is, for such year, denied both the deduction for foreign taxes provided by section 164(a) and the credit for foreign taxes provided by section 901 with respect to all income, war-profits, and excess profits taxes (described in section 901(b)(1)) which it has paid to any foreign country or possession of the United States. See section 853(b)(1)(A). However, under section 853(b)(1)(B), the regulated investment company is permitted to add the amount of such foreign taxes paid to its dividends paid deduction for that taxable year. See paragraph (a) of § 1.852-1.

(b) *Shareholder.* Under section 853(b)(2), a shareholder of an investment company, which has made the election under section 853, is, in effect, placed in the same position as a person directly owning stock in foreign corporations, in that he must include in his gross income (in addition to taxable dividends actually received) his proportionate share of such foreign taxes paid and must treat such amount as foreign taxes paid by him for the purposes of the deduction under section 164(a) and the credit under section 901. For such purposes he must treat as gross income from a foreign country or possession of the United States (1) his proportionate share of the taxes paid by the regulated investment company to such foreign country or possession and (2) the portion of any dividend paid by the investment company which represents income derived from such sources.

(c) *Dividends paid after the close of the taxable year.* For additional rules applicable to certain distributions made

after the close of the taxable year which may be designated as income received from sources within and taxes paid to foreign countries or possessions of the United States, see section 855(d) and paragraph (f) of § 1.855-1.

(d) *Example.* This section may be illustrated as follows:

(1) The X Corporation, a regulated investment company, has total assets, at the close of the taxable year, of \$10 million invested as follows:

Domestic corporations .....	\$4,000,000
Foreign corporations in:	
Country A .....	\$3,500,000
Country B .....	2,500,000
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	6,000,000
Total assets .....	10,000,000

(2) The dividend income of X Corporation is received from the following sources:

Domestic corporations .....	\$300,000
Foreign corporations:	
Country A .....	\$250,000
Country B .....	250,000
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	500,000
Total dividend income .....	800,000
Operation and management expenses .....	80,000
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Net dividend income .....	720,000
Taxes withheld by Country B on dividends of \$250,000 at a rate of 10 percent .....	25,000
Taxes withheld by Country B on dividends of \$250,000 at a rate of 20 percent .....	50,000
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Total foreign taxes withheld .....	75,000
Income available for distribution .....	\$645,000

(3) X Corporation has 250,000 shares of common stock outstanding and distributes the entire \$645,000 as a dividend of \$2.58 per share of stock.

(4) The X Corporation meets the 50 percent requirement of section 851(b)(4) and the requirements of section 852(a). It notifies each shareholder by mail, within the time prescribed by section 853(c), that by reason of the election they are to treat as foreign taxes paid \$0.30 per share of stock (\$75,000 of foreign taxes paid, divided by the 250,000 shares of stock outstanding), of which \$0.20 represents taxes paid to Country B and \$0.10 taxes paid to Country A. The shareholders must report as income \$2.88 per share (\$2.58 of dividends actually received plus the \$0.30 representing foreign taxes paid). Of the \$2.88 per share, \$1.80 per share (\$450,000

(which represents such part of the net dividend income of \$720,000 as the foreign dividend income of \$500,000 bears to the total dividend income of \$800,000) divided by 250,000 shares) is to be considered as received from foreign sources. Ninety cents is to be considered as received from Country A, and ninety cents from Country B.

**§ 1.853-3 Notice to shareholders.**

(a) *General rule.* If a regulated investment company makes an election under section 853(a), in the manner provided in § 1.853-4, the investment company is required, under section 853(c), to furnish its shareholders with a written notice mailed not later than 45 days (30 days for taxable years ending before February 26, 1964) after the close of its taxable year. The notice must designate the shareholder's portion of foreign taxes paid to each such country or possession and the portion of the dividend which represents income derived from sources within each such country or possession. For purposes of section 853(b)(2) and paragraph (b) of § 1.853-2, the amount that a shareholder may treat as his proportionate share of foreign taxes paid and the amount to be included as gross income derived from any foreign country or possession of the United States shall not exceed the amounts so designated by the company in such written notice. If, however, the amount designated by the company in the notice exceeds the shareholder's proper proportionate share of foreign taxes or gross income from sources within any foreign country or possession, the shareholder is limited to the amount correctly ascertained.

(b) *Shareholder of record custodian of certain unit investment trusts.* In any case where a notice is mailed pursuant to paragraph (a) of this section by a regulated investment company with respect to a taxable year of the regulated investment company ending after December 8, 1970 to a shareholder of record who is a nominee acting as a custodian of a unit investment trust described in section 851(f)(1) and paragraph (b) of § 1.851-7, the nominee shall furnish each holder of an interest in such trust with a written notice mailed on or before the 55th day following the

close of the regulated investment company's taxable year. The notice shall designate the holder's proportionate share of the amounts of foreign taxes paid to each such country or possession and the holder's proportionate share of the dividend which represents income derived from sources within each country or possession shown on the notice received by the nominee pursuant to paragraph (a) of this section. The notice shall include the name and address of the nominee identified as such. This paragraph shall not apply if the regulated investment company agrees with the nominee to satisfy the notice requirements of paragraph (a) of this section with respect to each holder of an interest in the unit investment trust whose shares are being held by the nominee as custodian and not later than 45 days following the close of the company's taxable year, files with the Internal Revenue Service office where such company's return for the taxable year is to be filed, a statement that the holders of the unit investment trust with whom the agreement was made have been directly notified by the regulated investment company. Such statement shall include the name, sponsor, and custodian of each unit investment trust whose holders have been directly notified. The nominee's requirements under this paragraph shall be deemed met if the regulated investment company transmits a copy of such statement to the nominee within such 45-day period: *Provided however*, if the regulated investment company fails or is unable to satisfy the requirements of this paragraph with respect to the holders of interest in the unit investment trust, it shall so notify the Internal Revenue Service within 45 days following the close of its taxable year. The custodian shall, upon notice by the Internal Revenue Service that the regulated investment company has failed to comply with the agreement, satisfy the requirements of this paragraph within 30 days of such notice.

[T.D. 7187, 37 FR 13257, July 6, 1972]

**§ 1.853-4 Manner of making election.**

(a) *General rule.* A regulated investment company, to make a valid election under section 853, must—